

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

ANTHONY J. FOLINO and  
PETER D. OLIVIERI,

Plaintiffs,

v.

ORDER  
07-CV-407

THE TOWN OF NIAGARA, et al.,

Defendants.

---

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1), on August 7, 2007. On October 16, 2007, defendants filed a motion for summary judgment. On June 11, 2008, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that defendants' motion be granted in part and denied in part.

Defendants filed objections to the Report and Recommendation on June 19, 2008, and plaintiffs, who are proceeding *pro se*, filed objections to the Report and Recommendation on July 11, 2008. Defendants filed a response to plaintiffs' objections on July 30, 2008., and plaintiffs filed a response to defendants' objections on July 31, 2008. Oral argument on the objections was held on August 28, 2008.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which

objections have been made. Upon a *de novo* review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, the Court: (1) grants defendants' motion for summary judgment as to plaintiffs' claims of false arrest/illegal seizure, false imprisonment and malicious prosecution; (2) denies defendants' motion for summary judgment as to plaintiffs' claims of excessive force against defendants Spears, Soluri and Cloutier; and (3) grants defendants' motion for summary judgment as to defendants Suitor, Teixeira, the Town of Niagara, Niagara Town Court and the Town of Niagara Police Department. Thus, the only claims remaining in the case are plaintiffs' claims of excessive force against defendants Spears, Soluri and Cloutier.

The parties shall appear on December 12, 2008, at 9:00 a.m. for a meeting to set a trial date.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: September 29 , 2008